

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Civil Action No. 1:11-cv-00334-SM

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NEW CINGULAR WIRELESS PCS, LLC,

Plaintiff,

v.

CITY OF MANCHESTER, NEW HAMPSHIRE, and  
ZONING BOARD OF ADJUSTMENT of the CITY OF  
MANCHESTER, NH,

Defendants.

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**ORDER OF REMAND**

This matter having come before the Court on the parties' Joint Motion to Remand for a Limited Purpose, it is hereby ordered that:

1. This matter is hereby remanded to the Zoning Board of Adjustment ("Board") of the City of Manchester ("City") for the limited purpose of allowing the Board to consider AT&T's additional information concerning its coverage gap and the absence of feasible alternatives developed after the Board issued its decision dated April 14, 2011 (A.938). AT&T will file this additional information with the Board on or before August 19, 2013.

2. On or before October 18, 2013, the Board shall conduct and complete expedited proceedings on remand and issue its final written decision as to whether the Board (a) continues to deny a variance for the reasons stated in its decision dated April 14, 2011 (A.938), or (b) reverses that decision and grants variance relief (consistent with the Board's original decision dated February 10, 2011 (A.930).

3. As the Board previously allowed multiple opponents' motions for rehearing concerning the Board's original approval decision and denied AT&T's motion for rehearing concerning the

Board's subsequent denial decision, as this litigation is in an advanced stage, as cross motions for summary judgment are pending, as the case is ready for trial, and as the Board's vote on remand is sought for the limited purpose of assisting the Court in connection with the imminent trial and potential resolution of this litigation, AT&T "need not file a second motion for rehearing to preserve for appeal any new issues, findings or rulings first raised by the ZBA in" a denial decision under paragraph 3(a). *See McDonald v. Town of Effingham Zoning Bd. of Adjustment*, 152 N.H. 171, 176, 872 A.2d 1018, 1023 (N.H. 2005).


4. On or before October 31, 2013, the parties shall report to the Court as to (a) the Board's final decision on remand, and (b) an updated Stipulation for the expedited resolution of this case supplementing the Stipulation previously filed (ECF No. 50).

5. This Court shall retain exclusive jurisdiction for all purposes concerning judicial review of the Board's final decision on remand.

6. Except for any standard charges for mailed and published notice of the public hearing on remand, the Defendants shall not request or assess any additional charges or fees to AT&T with respect to the remand proceedings.

7. The Board shall reference this Order of Remand in its notice of the public hearing on remand and shall include this Order of Remand and in the record of the remand proceedings.

BY THE COURT:

  
Steven J. McAuliffe, U.S. District Judge

Dated: July 25, 2013